U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: DEC 2 2 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or willful misrepresentation. The applicant is the husband of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen daughter. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States to reside with his lawful permanent resident wife.

The Service Center Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, failed to show that his inadmissibility would cause extreme hardship to a qualifying relative, and denied the application accordingly. *Decision of Director*, dated December 29, 2011.

On appeal, counsel submits a brief, new country conditions articles and copies of evidence previously submitted in support of the applicant's waiver application. The record also includes, but is not limited to: hardship statements from the applicant's wife, daughter, son and the applicant; support letters from friends; medical documents for the applicant's wife and son; a psychological evaluation of the applicant's son and daughter; academic records for the applicant's son and daughter, and tax records for the applicant's daughter. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides, in pertinent part:

> The [Secretary of Homeland Security] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien....

The applicant in this case previously admitted in a sworn statement to presenting false documents with his application for temporary resident status. *Memorandum Record of Interview,* signed by the applicant on November 21, 1991. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure an immigration benefit through fraud or willful misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his lawful permanent resident spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch,* 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige,* 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim,* 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy,* 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige,* 20 I&N Dec. at 882). The adjudicator

"must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record contains references to hardship the applicant's adult son and daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's qualifying relative.

The record does not establish that the applicant's wife would experience extreme hardship upon separation from the applicant. The applicant's wife states that the denial of her husband's waiver is affecting her psychologically but the record contains no evidence of her mental health. The applicant's wife states that she is worried about her children, currently aged 23 and 21, who have emotionally changed since the denial of the applicant's waiver application. The record contains a psychological evaluation for the applicant's children finding the son unwilling to face the applicant's removal from the United States and the daughter to be suffering from almost clinical levels of depression and anxiety. *Forensic Psychological Testing Report by Gilbert Robbins, III, M.A.*, dated February 22, 2011. On appeal, no new evidence is included showing the current psychological conditions and/or treatments of the applicant's son or daughter and how their conditions have impacted the applicant's wife, the qualifying relative. The record also lacks evidence that the applicant's wife's mental health or emotional well-being has suffered or would suffer due to the applicant's inadmissibility.

Regarding financial hardship, the applicant's spouse states that she relies on him for financial support because she does not work. The applicant's children state that they rely on the applicant's

financial support and are interested in continuing with their college educations but will face academic and financial hardship without the applicant's help. The record contains no evidence of the applicant's income and expenses or the financial support that he provides for the qualifying relative or his family, such as, for example, college tuition payments. The record does not contain tax records for the applicant or his wife, but tax records for the applicant's daughter show that she earned $28,734 in 2010 and filed as a single individual. The record does not contain financial records for the applicant's son although the psychological evaluation mentioned that he recently began employment as a waiter. The record does not contain evidence regarding the unavailability of comparable jobs or salaries in Mexico. The record contains insufficient evidence that the applicant's wife's financial difficulties upon separation would rise to the level of extreme hardship.

While emotional and financial difficulties are common results of inadmissibility, the record, in the aggregate, does not establish that the applicant's spouse has or would suffer extreme hardship in the event of separation from the applicant.

The record also does not establish that the applicant's spouse would experience extreme hardship if she were to relocate to Mexico with the applicant. On appeal, counsel asserts that the applicant's spouse will suffer financial, medical and emotional hardship upon relocation. Counsel submits 2010 medical records for the applicant's wife showing that she was diagnosed with allergic rhinitis, abdominal pain RUQ, and epigastric abdominal pain in March 2010. Counsel and the applicant's spouse state that she will not be able to afford comparable medical care in Mexico, but on appeal, no new medical records were submitted to show the applicant's wife's current medical conditions, if any, which require medical care or evidence that comparable medical care in Mexico is unavailable or unaffordable. The applicant's wife also states that her adult children will experience emotional and academic hardship upon relocation since they are not familiar with the culture and do not read and write Spanish. The medical evidence regarding the applicant's son indicates that he suffers from asthma and chronic allergies. However, the record does not contain evidence that the applicant's adult children would relocate to Mexico and that any difficulties they would face upon relocation would cause the applicant's spouse to suffer extreme hardship.

The applicant's wife further states that the family will lose all of their property upon relocation and that the applicant will be unable to find work or support his family in Mexico. The record contains no evidence to supports these claims of financial hardship upon relocation. The applicant's wife also states that she is concerned about moving to Mexico because of all of the crime and violence. In support of this claim, counsel submits country conditions articles discussing increased violence and crime in Mexico. While the applicant has demonstrated that country conditions in Mexico involve greater crime and violence, the record, in the aggregate, does not indicate that the degree of difficulties that the applicant's wife would face upon relocation rises to the level of extreme hardship.

On appeal, the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to

a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.